

# TERMS AND CONDITIONS OF SALE



## 1. DEFINITIONS

"Acknowledgment of Request"	means Banner's written acknowledgment of a Request offering to supply the Goods to the Buyer upon these terms and conditions.
"the Buyer"	means the person, firm or company buying the goods from Banner.
"Contract"	means the contract formed by the despatch of a Purchase Order signed by the Buyer or by Banner's acceptance of a Telephone Order.
"the Goods"	means the articles or things forming the subject matter of the Contract between Banner and the Buyer.
"Parties"	means Banner and the Buyer.
"Purchase Order"	means the Buyer's written acceptance of Banner's Acknowledgment of Request.
"Request"	means the Buyer's request to Banner to purchase the Goods.
"Telephone Orders"	means the Buyer's telephone instruction to Banner to purchase the Goods upon these terms and conditions.
"Banner"	means Banner Batteries (GB) Limited.

## 2. EFFECT

No terms or conditions for the supply of Goods (whether contained in the Buyer's request or Purchase Order or otherwise) shall be binding on Banner other than those set out herein. All Goods sold or supplied by Banner are done so solely upon these terms and conditions and shall override any other representations terms or conditions stipulated referred to or implied by the Buyer or Banner whether in any other document or in any negotiations or discussions.

## 3. FORMATION OF CONTRACT

- 3.1 Upon receipt of a Request Banner shall send to the Buyer an Acknowledgment of Request. If the Buyer wishes to accept an Acknowledgment of Request it shall sign and send to Banner a Purchase Order within 30 days after the date of the Acknowledgment of Request.
- 3.2 A Request may be made by telephone in which event it shall be construed as a Telephone Order and may be accepted as such by Banner.
- 3.3 A Contract shall exist between the Parties upon the Buyer signing and despatching or otherwise providing Banner with a Purchase Order in accordance with sub-clause 3.1 or upon Banner's acceptance of a Telephone Order.
- 3.4 Requests from a first time buyer must be accompanied by two trade references and one bank reference. Until credit clearance has been obtained a first time buyer may at Banner's discretion purchase goods up to a maximum value set by Banner from time to time.

## 4. CATALOGUES

Catalogues, price lists and other advertising matter are only an indication of the type of goods offered and except as expressly provided in these terms and conditions no prices or other particulars contained in them shall be binding on Banner.

## 5. VARIATION OF CONTRACT

Neither Banner nor the Buyer shall be bound by any variation, waiver of or addition to the Contract or these terms and conditions unless made in writing signed by or on behalf of both Banner and the Buyer.

## 6. PRICES

- 6.1 Unless otherwise agreed by Banner in writing the prices applicable to the Contract are those appearing in Banner's published price list current at the time of Banner's Acknowledgment of Request.
- 6.2 Prices are quoted in pounds sterling exclusive of VAT or any other sales taxes.
- 6.3 Where the Goods consist of twenty or more batteries prices stated include the cost of carriage within the United Kingdom mainland and the cost of packing to Banner's normal standards.
- 6.4 Where the Goods consist of less than twenty batteries prices stated will be exclusive of the cost of carriage and the cost of packing and Banner reserves the right to charge the costs of such carriage and packing to the Buyer at cost.

## 7. PAYMENT

- 7.1 Payment for the Goods shall be due within 30 days of the date of invoice ("the due date for payment") unless an authorised representative of Banner agrees different terms in writing with the Buyer.

**GB: Banner Batteries (GB) Ltd, Units 5-8 Canal View Business Park, Wheelhouse Road, Rugeley, Staffordshire WS15 1UY**

Telephone: 01889 571100, Fax: 01889 577342, E-mail: office.bgb@bannerbatteries.com

Company Registration No: 3351420, VAT Registration: GB688118401'

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- 7.2 Payment shall be deemed not to have been made until any all cheques, drafts and bills by which payment is to be effected have been cleared or honoured (as the case may be).
- 7.3 Banner reserves the right to charge interest on payments outstanding after the due date for payment at the rate (both before and after judgment) of four per cent per annum above the base lending rate of Banner's principal bankers for the time being in force calculated on the outstanding balance (including interest) due from the date for payment down to receipt by Banner of payment such interest compounding and being added to the outstanding balance due at three monthly intervals.
- 7.4 Where the Buyer's request Banner undertakes urgent non-scheduled delivery Banner reserves the right to make an exceptional charge for such delivery irrespective of the value of the Goods in question such charge to be paid in accordance with sub-clause 7.1 above.

## 8. DELIVERY

- 8.1 When the price quoted in the Contract includes delivery to the Buyer or when Banner otherwise agrees to deliver the Goods to the Buyer such carriage shall be by any method of transport at Banner's option and delivery shall take place when the Goods are loaded off Banner's medium of transport at the address specified by the Buyer.
- 8.2 Where the Buyer undertakes to collect the Goods, delivery shall take place when the Goods are made available for collection by the Buyer at Banner's premises.
- 8.3 Any dates times or periods quoted by Banner for delivery of the Goods are estimates only and Banner shall not be liable for failure to meet such estimates or for any costs or expenses incurred as a consequence of such failure and accordingly the Buyer shall not be entitled to refuse to accept the Goods merely because of such failure.
- 8.4 Where the Goods are to be supplied by instalments each instalment shall be deemed to be a separate contract.
- 8.5 The Goods shall be at the Buyer's risk from the time of delivery or, if earlier, when they are placed at the Buyer's disposal.

## 9. LOSS DAMAGE OR NON-DELIVERY

- 9.1 Where the Buyer undertakes to collect the Goods Banner shall not in any circumstances be liable for any damage from whatever cause which arises while the Goods are in transit.
- 9.2 Where Banner undertakes carriage:
- 9.2.1 The Buyer shall advise Banner in writing of any non-delivery of the whole or any part of any Purchase Order within seven working days of the date estimated for delivery; and
- 9.2.2 The Buyer shall advise Banner in writing of any damage to the Goods within three days of delivery and/or shall so advise any carrier within the time limited by such carrier's Conditions of Business or Carriage or seven working days, whichever shall be the shorter period.
- 9.3 Goods delivered in a damaged condition must be signed for as such and retained for Banner's inspection. Inspection will be carried out by Banner within ten working days of receipt by Banner of the delivery note duly signed. Where Banner is satisfied that damage occurred prior to delivery to the Buyer Banner may in its absolute discretion and in satisfaction of its entire liability to the Buyer repair or (at Banner's option) replace free of charge any part of the goods so damaged.

## 10. DEFECTS AFTER DELIVERY

- If any defect in the materials from which the Goods are made or fault in manufacture of the Goods shall be found to exist and be reported to Banner in writing Banner shall repair or at its option replace the defective part free of charge provided it is returned to Banner's premises and provided also that this guarantee:
- 10.1 shall not cover defects or faults in parts materials or components not manufactured by Banner,
- 10.2 does not apply to damage sustained in transit; and
- 10.3 shall cease to have effect if the Goods have been used for any purpose other than those for which they are intended or otherwise than in accordance with Banner's instructions (if any), or stored in improper conditions or if any seal has been removed, broken or tampered with or if Banner's serial number has been removed, defaced or altered.
- 10.4 A liability of the seller is excluded should any defect or damage derive from the use by the purchaser of a battery with insufficient capacity or rated power for the foreseen application; further when a conventional starter battery is employed by the purchaser instead of a different type as recommended by the manufacturer (for example AGM or EFB battery), or when instead of a long term dischargeable battery merely a conventional starter battery is installed (for example in the case of a caravan, camper, boat). The use of the battery must always comply with Banner's classification recommendation as contained in the Book of Power at <https://www.bannerbatterien.com/en-gb/Company/News> or the battery search <https://www.bannerbatterien.com/en-gb/Battery-search> or correspond with the battery type stipulated by the manufacturer of the device (OE number, performance requirement), otherwise resulting defects and damage shall not justify any liability of the seller.

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## 11. EXCLUSION OF LIABILITY

- 11.1 Subject as expressly provided in these terms and conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.2 Except in respect of death or personal injury caused by Banner's negligence, Banner shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term or any duty at common law, or under the express terms of the Contract for any loss or damage or for any consequential loss or damage (whether for loss of profits or otherwise), costs, expenses or other claims for consequential compensation whatsoever however caused which arise out of or in connection with the supply of Goods to the Buyer.

## 12. STORAGE

Should the Buyer fail to give Banner adequate delivery instructions or if so agreed fail to collect the Goods from Banner's premises on any agreed date then Banner shall be entitled (but not bound) to arrange storage of the Goods either at its own works or elsewhere on the Buyer's behalf and all charges for such storage or for demurrage shall be payable by the Buyer.

## 13. RETENTION OF TITLE

- 13.1 For the purposes of Sections 17 (1) and 19 (1) of the Sale of Goods Act 1979, the property in the Goods shall be transferred to the Buyer upon and only upon receipt by Banner of full payment of the price of the Goods and of all other sums owing to Banner by the Buyer from time to time.
- 13.2 Until the goods have been paid for in full the Buyer:-
- 13.2.1 agrees to hold the Goods in a fiduciary capacity for Banner as trustee.
- 13.2.2 agrees to store the Goods in such a way that they are clearly identifiable as the property of Banner; and
- 13.2.3 may sell the Goods to third parties but in doing so shall be acting as agent on behalf of Banner and shall keep the proceeds of any such sub-sales in a separate account and the proceeds of any such re-sale shall be held by the Buyer as trustee for Banner.
- 13.3 At any time until the Goods have been paid for and without prejudice to any other remedies, Banner or its agents shall be entitled immediately after giving notice of its intention to do so to enter upon the premises of the Buyer with such transport as may be necessary and re-possess any Goods to which it has title hereunder.
- 13.4 Nothing in this clause shall confer any right on the Buyer to return Goods supplied hereunder or to refuse or delay payment thereof, unless otherwise agreed in writing.

## 14. LIABILITY FOR DELAY

Banner shall not be liable in any way for any loss or damage arising directly or indirectly through or in consequence of delivery of the Goods being prevented or delayed by late provision to Banner of any information or instruction pertinent to the fulfilment of the Contract by Banner or any other causes or circumstances whatsoever beyond the reasonable control of Banner.

## 15. ASSIGNMENT

The Contract is personal to the Buyer who shall not assign or charge the benefit of any of its rights without Banner's prior consent.

## 16. TERMINATION

- 16.1 If the Buyer shall make default or commit a breach of these terms and conditions or of any of his obligations to Banner or if any distress or execution shall be levied upon the Buyer's property or assets or if the Buyer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Buyer shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Buyer or if a petition is presented or a meeting convened for considering a resolution or other steps are taken for the winding up of the Buyer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction), then without prejudice to any other right or remedy available to Banner, Banner shall be entitled without notice:-
- 16.1.1 to suspend or terminate the Contract or any unfulfilled part thereof; and
- 16.1.2 to halt any Goods and transit: and
- 16.1.3 either by an agent or itself to have access to the Buyer's premises for the protection, removal, realisation and disposal of any Goods at any time and from time to time in which the property shall not have passed from Banner to the Buyer.

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16.2 If Banner terminates the Contract in accordance with this clause then without prejudice to any other rights Banner may have, it shall be entitled to retain any advance payment made by the Buyer.

## 17. NOTICES

17.1 Notices and other documents to be sent by one Party to the other shall be made in writing and posted in a first class pre-paid envelope to the Buyer's or Banner's principal place of business or failing those to the address at which one of the Party reasonably believes the other to be carrying on business.

17.2 A notice shall be deemed to have been given forty-eight hours after posting (or ninety-six hours after posting where the notice is sent from and/or addressed outside the United Kingdom) and in proving such service it shall be sufficient to show that the envelope was properly addressed and put in the post.

## 18. LEGAL CONSTRUCTION

Failure by Banner to enforce any of the Contract terms and conditions shall not be construed as a waiver of any of Banner's rights hereunder. The validity, construction and performance of the Contract shall be governed by English law.

## 19. SEVERENCE

These conditions shall apply in full save that if any Act of Parliament or other Statutory Provision for the time being in force shall avoid or make unenforceable any of the provisions hereof these terms and conditions shall be deemed to apply with the exclusion of the provisions hereof which shall be void or unenforceable as aforesaid.

**THE LEGAL AND BENEFICIAL OWNERSHIP OF THE GOODS SHALL REMAIN WITH US (BANNER) AND SHALL NOT PASS TO YOU (THE BUYER) UNTIL WE (BANNER) HAVE RECEIVED PAYMENT IN FULL**

<http://www.bannerbatteries.com>

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